

Reply of DMRC with regard clarifications / suggestions raised by participants in Pre-Bid Meeting held on 03-02-2015 with regard to Exclusive Advertisement Rights on outside civil structures from ramp near R.K.Ashram metro station to Dwarka with future extension from Dwarka to Najafgarh and Yamuna Bank to New Ashok Nagar.

SN	Clarification Sought by Participants	DMRC's Reply / Clarifications
1	Scope of Work-Page 7 Pt. 2.0 - Advertising area utilization. Please clarify if concessionaire has flexibility to utilize the total area as per his convenience. Example: Concessionaire utilizes 89 sqm area on stretch between R.K.Ashram-Janakpuri instead of Dwarka to Najafgarh	Yes. Concessionaire has flexibility to utilize the total area as per his convenience subjected to the feasibility survey carried out by DMRC. As per Clause 10.0 of the Bid Document, the annual license fee (payable on quarterly basis, in advance) quoted shall be for minimum advertisement area of 1111 sqm (before handover of Dwarka to Najafgarh section) or 1200 sqm (after handover of Dwarka to Najafgarh section) even if not fully utilized.
2	RFP-Page 12 Pt. 9.0 - Fitment Period / Additional Time In case Concessionaire need to replace more than 50% of advertising panels. DMRC should grant additional time period up to 6 months.	As per Clause 9.0 of RFP, no additional time is permissible beyond 60 days from the date of handover of pre-fabricated panels.
3	Page 20 Pt. 17.0 - With reference to Pre-Bid meeting scheduled on 3-Feb-2015. As per our understanding DMRC will share revenue with Authorities like MCD if applicable. Please confirm.	Yes DMRC will share the revenue with authorities like MCD's as applicable from time to time.
4	Surrender of License Page 45 pt. 2.0 - Surrender Clause In case DMRC terminate the contract due to any reason other than License Fee default, Concessionaire should get at least 6 months advance notice instead of 1 month.	Not agreed to.
5	Undertaking Page 88 - MCD Outdoor Advertising policy of 2007 finalized as per the directions of the Hon'ble Supreme Court by the Environment Pollution (Prevention and Control) Authority on September 10, 2007 is only available policy in public forum. Please clarify whether you are referring this policy or there is another policy of 2008. Further, in case DMRC is referring to policy of 2008, we would like to bring into your kind notice that Outdoor Advertising Policy of 2008 is not available on any public forum. Therefore, we request you to facilitate the same. It would be difficult for bidders to submit this undertaking without having this policy document	If MCD Outdoor Advertising Policy 2008 is not available in public domain then any other prevailing applicable policy available shall be applicable .
6	Dwarka Najafgarh stretch - When will Dwarka Najafgarh line get operational? When civil structures on this line get available for advertisements?	The Dwarka to Najafgarh Extension will be operational tentatively by 31/03/16 RFP(Page 9) .The civil structure shall be available for advertisement only after the line is operational.

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7	<p>Electrification of Advertising panels - We believe DMRC will provide electrical wiring up to the power point of advertising panels. Please clarify.</p> <p>What are the electricity charges?</p>	<p>Only a single point electricity supply shall be provided . The Licensee is required to do all wiring/laying the cables as required from this designated point at his own cost as per the approved plans and specifications as indicated by the authorized representative of DMRC. The Licensee is also requested to install the cutouts/MCBs/ ELCB or any other safety device and electronic energy meters as may be indicated by the authorized representative of DMRC at his own cost.</p> <p>Electricity supply will be provided as per terms and conditions indicated in Annexure-9, "Terms and conditions for provision of Electricity". Please refer Clause 9.0 of General Terms and Conditions of the license agreement(Page 41)</p>
8	<p>Please advise in case DMRC has any minimum expectations on bid prices below which DMRC will not award this contract.</p>	<p>Bidders are requested to assess the nearby rates and quote the rate per sqm per month accordingly.</p>
9	<p>Page 33 Recital (d) - "This display of advertisement must be (giving full compliance to Technical Parameters of MCD's Outdoor Advt. Policy/ EPCA Guideline/ directives given by Hon'ble Courts" - In this clause is DMRC referring to specific cases in which Courts have given directions on the subject matter of this agreement? If yes can DMRC name these cases?</p> <p>In some of the recent Judgement the court has declared the advertisement licensee fee under the outdoor advertisement policy as ultra-vires. How is it going to impact it.</p>	<p>Please follow tender conditions.</p>
10	<p>Page 37 Clause 4.5 - "The License Fee will be increased at the rate of 5 % per annum, on compounding basis. The first escalation will be applicable with effect from 01/04/2016. This shall be irrespective of the dates on which additional space would be handed over to the licensee." - Will this escalation be applicable to additional space as well? Does it mean if additional spaces are handed over to the licensee after 01/04/2016 the said escalation shall be applicable?</p>	<p>As per Clause no 4.5 of DLA,the License fee will be increased at the rate of 5% per annum, on compounding basis.The first escalation will be applicable with effect from 01/04/2016. As the rates quoted are as of now (2015) for the additional spaces handed over subsequently after 2016, the escalation shall be applicable w.e.f 01.04.2016.</p>

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11	<p>Page 38 Clause 7.0 - "Licensee shall submit the sample of media to be placed/ inserted/ fixed in the advertising panels within 15 days from the date of issue of letter of acceptance." - Is DMRC asking the Licensee to submit the sample of all media which is to be placed/ inserted/ fixed in the advertising panels throughout the currency of this agreement or Licensee will have to submit only those sample media which the licensee intends to fix in the beginning of the agreement?</p>	<p>Licensee shall submit the sample content of advertisement for the approval of DMRC which he intends to fix/insert/place in the advertising panels. Incase, if the licensee intends to change the media, then the same should be submitted to DMRC for approval again. The approvals are necessary as there are few prohibited items given in clause-18(page no-45) in General terms and conditions of the document. The licensee can submit the creatives/advertisement-content by e-mail also for speedy approval.</p>
12	<p>Page 39 Clause 12.0 - "The Licensee will not ask for any claim or seek any compensation from DMRC if advertisements are not permitted due to court order/local laws/civil authorities." - Are there any litigations going on concerning DMRC which can have bearing on DMRC's performance under this agreement? Does it mean that there will no pro-rated reduction or adjustment of fee, if the advertisement are not permitted by court order/local laws/civil authorities even it is being done as per the license conditions.</p>	<p>No litigation is going on as on date concerning DMRC which may have a bearing on this agreement. There are few prohibited items given in clause-18(page no-45) in General terms and conditions of the document which may increase and shall be followed due to court order/local laws/civil authorities.</p>
13	<p>Page 39 Clause 13.0 - "The Licensee agrees voluntarily and unequivocally to make all payments as may be due in the due date, without waiting for any formal invoice from the licensor." - Will DMRC issue instruction (s) to the licensee as to when the invoice can be collected from DMRC's office?</p>	<p>Please refer clause no-26 (page no-47) in General terms and conditions regarding schedule of payment and invoicing. The licensee can collect the invoices at any time during/after the period given in the above mentioned clause after coordination with the concerned DMRC representative.</p>
14	<p>Page 39 Clause 15.0 - "If the licensee is desirous of revising already approved advertisement plan, the Licensee shall submit revised advertisement plan for approval of DMRC once in a quarter only. The revised advertisement area shall become effective after 30 days from the date of approval by DMRC." - Why this 30 days time period given after which revised advertisement area will be available to the licensee for advertisement? What happens if the licensee needs to use this revised advertisement area on urgent basis?</p>	<p>Agreed. The charging of the revised approved advertisement location shall start within 30 days from the date of approval or the actual utilization of the revised approved advertisement location whichever is earlier.</p>

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15	<p>Page 40 Clause 15.0 - "If during inspection, the area of advertisement space for any category at any station is found to be unapproved location or more than the approved area, it shall be treated as unauthorized occupancy." - Does it means even if there is one unapproved panel it will be treated as unauthorized occupancy?</p>	<p>Please refer Clause 15.0 of DLA(Page 40) If during inspection, the area of advertisement space for any category at any station is found to be at unapproved location or more than the approved area, it shall be treated as unauthorized occupancy. The license fee of such unauthorized occupancy shall be charged at double the rate of that rate structure from the first day of that quarter or from the date of previous inspection in which the space was found as per approved plan, whichever is later and shall be charged till a vacation certificate of that unauthorized occupancy from the concerned Station Manager or his authorized representative is submitted to DMRC or the unauthorized space is got approved from the DMRC, whichever is later.</p>
16	<p>Page 41 Clause 7.1 of General Terms and Conditions of the license agreement - "Non-payment of license fees and other dues within the prescribed date will constitute breach of the terms of this agreement and shall render the license liable to Breach of Contract." - Is it DMRC's intention to cover non-payment of all sorts of dues under this clause or is it to cover undisputed and <u>accepted dues</u>?</p>	<p>Clause 7.1 of General Terms and Conditions of the license agreement refers to cover non-payment of all sorts of dues except penalties. For penalties please refer clause no-12 at page no-44 of General terms and conditions of the document.</p>
17	<p>Page 44 Clause 12.0 of General Terms and Conditions of the license agreement - "DMRC Administration reserves the right for deduction of DMRC dues from Licensee's Interest Free Security Deposit on the following grounds: a) Any amount imposed as a fine by DMRC Administration for irregularities committed by the Licensee. b) Any payment/ fine made under the order/ judgment of any court/ consumer forum or law enforcing agency or any person working on his behalf. " a) What is the definition of "irregularity" for the purpose of this agreement? b) Is it a general covenant or DMRC intends to connect any payment/ fine made under the order/ judgment of any court/ consumer forum or law enforcing agency which pertains to the Licensee and arising out of this agreement?</p>	<p>a) Irregularities are the deficiencies arising out of the deviation of the terms and conditions of the tender document by licensee. b) This Clause is self explanatory.</p>

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18	Page 44 Clause 13 of General Terms and Conditions of the license agreement - "Periodical joint inspection will be conducted by DMRC Administration and Licensee and discrepancy if any noticed or instructions issued by DMRC Administration are not observed by the Licensee within a reasonable time, the DMRC Administration are not observed by the Licensee within a reasonable time, the DMRC Administration also reserves the right to impose fine up to Rs. 10,000/- per irregularity." - What is the definition of discrepancy for the purpose of this agreement?	Discrepancies are the deficiencies arising out of the deviation of the terms and conditions of the tender document by the licensee.
19	Page 45 Clause 20.2 of General Terms and Conditions of the license agreement - "On operational ground or any other reason whatsoever, DMRC reserves the rights to terminate the contract by giving one month advance notice." - What are the operational grounds which can affect DMRC's performance under this agreement?	Operational Grounds relates to any inconvenience created at the stations and train operations which includes the safety of the commuters, obstructions to the commuter movement or in public interest. This Clause shall be exercised by DMRC in extreme exigencies and only when it is necessarily required.
20	Page 46 Clause 21.0 of General Terms and Conditions of the license agreement - " DMRC may also terminate the contract on administrative ground after giving 1 month notice." - What are the administrative grounds which can affect DMRC's	Administrative Grounds relates to the any other factors which are external to DMRC or in public interest or due to statutory authorities. This Clause shall be exercised by DMRC in extreme exigencies and only and when it is necessarily required.
21	license agreement - "All disputes relating to this agreement or on any issue whether arising during the progress of the service or after the completion or abandonment thereof or any matter directly or indirectly connected with this agreement shall in the first place be referred to a Sole conciliator appointed by Director, DMRC . The Licensee will have no objection if the sole conciliator is an employee of DMRC." - How can DMRC be judge of his own cause?	The arbitration proceedings shall be governed by Indian Arbitration and Conciliation ACT 1996.
22	Page 48 Clause 29.2 of General Terms and Conditions of the license agreement - " The Licensor (DMRC) shall provide a panel of three Arbitrators which may also include DMRC officers." How can DMRC be judge of his own cause?	The arbitration proceedings shall be governed by Indian Arbitration and Conciliation ACT 1996.

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23	license agreement - " DMRC reserves the right to cancel the agreement and forfeit the security deposit in its favour in case it is brought to its attention an act of criminal nature has been committed by the licensee/ successful tenderer. The decision in the matter of determination of the act being criminal or not, vests solely with DMRC." - Does this clause aims to cover criminal act committed by the company or its employee?	This clause aims to cover criminal act committed by the company, owner(s) or its employee(s) which pertains to this contract.
24	Page 14 pt no.17 of RFP - " All taxes including municipal/advertisement taxes, service tax and all other statutory dues including property tax, where applicable, shall be borne solely by the licensee." - Please note that all related issues of MCD are to be taken care by the DMRC and not the licensee.	Yes DMRC will share the revenue with authorities like MCD's as applicable from time to time. Property Tax, if applicable shall be borne by DMRC. However, Service Tax as applicable from time to time shall be borne by the licensee.
25	<p>Point No. 6 of the NIT - "License fee for the prefabricated panels as per Annexure-A (Minimum area of 1111 Sqm) will be charged from 60th day from the handover of the area and license fee for bare advertisement space/additional advertisement space beyond 1111 Sqm area will be charged from 30th day from the approval given by the DMRC." - It is suggested that the same schedule may be adopted as has been prescribed in the recently awarded tenders which is as follows:</p> <ol style="list-style-type: none"> 1. Payment of Interest Free Security Deposit/Performance Security to DMRC: Within 30 days of issue of letter of acceptance 2. Locations to be handed over: Within 10 days of making the due payments in accordance with LOA and approval of Location, wiring and Routing Plans 3. Signing of License Agreement: Within 30 days after payment of dues as per letter of acceptance 4. Payment of 1st Quarterly License Fee: Within 75 days from handing over of locations <p>This will be practicable and will be in uniformity to already taken decisions by DMRC.</p>	The same may be agreed to as it shall invite better participation.

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26	Point No. 7 of NIT - "The successful bidder will also have to deposit the advance first quarterly License Fees, applicable Service Tax thereto and other charges such as electricity consumption deposit (Electric Security Deposit) etc. along with the Interest Free Security Deposit within 30 days from the date of issue of Letter of Acceptance and take the possession of site. In case the bidder failed to deposit the requisite demand as per letter of acceptance (LOA) within 30 days from date of issuance of LOA, an extended period to honor LOA with penal surcharge for late payment shall be applicable." - Please refer to our submissions at Sr. No. 01 against Point No.6 of NIT. However it is suggested that the clause regarding extension of period of 30 days for submission of Interest Free Security Deposit with penal charges for a further period of 15 days may be retained.	As per Clause no: 7.0 of the tender document, 3% flat interest will be charged if the Interest Free Security Deposit is not deposited within 30 days from the date of issuance of LOA.
27	Point No. 13 of NIT - "Bidders are required to deposit, along with its Bid, a refundable bid security amounting to Rs.25.00 Lacs only. The Bid Security shall be payable in the form of a DD/PO." It is suggested that the Bid Security may be allowed to be deposited in the form of Bank Guarantee also in addition to	Not Agreed to.
28	Point No. 13 of NIT - "The refundable interest free security deposit can be returned (After adjusting outstanding dues, if any) only on completion of lock-in period of 5 (five) years if the licensee wants to surrender the contract by giving 6 months advance notice after successfully completing 5 years for the date of hand-over." - It is suggested that the clause to give six months notice should not be in addition to the lock in period. The concessionaire should be free to surrender by giving six months notice subject to completion of lock in period during the entire	Agreed The licensee can give the six months notice for surrender after completion of four years and six months to make the total lock- in period equal to 5 years.
29	Point No. 17 of NIT - "All taxes including Municipal/Advertisement Taxes, Service tax and all other statutory dues including property tax, where applicable, shall be borne solely by the licensee without any contest." - It is suggested that the Advertisement Tax Charged by Municipal Corporations of Delhi should be entirely borne by DMRC only and the concessionaire should not be burdened with any of these Municipal Taxes. This was however clarified in the Pre Bid	Same as point no:24

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30	Point No. 20 of NIT - "The DMRC Administration reserves the right to accept or reject any quotation. Tenderer hereby agree that the DMRC Administration reserves the right to accept or reject any tender applications without citing any reason whatsoever for rejecting the same." - It is suggested that in order to maintain transparency in the bidding process the grounds of rejection should be outlined in the tender document itself and made known	Grounds of rejection are already outlined in the tender document.
31	Point No. 40 - "If any approvals are required to be taken from any local /municipal authority for display of the advertisement the same is the sole responsibility of the Licensee. In case any fine is imposed on DMRC (Licensor) due to not obtaining of such approvals the same may be recovered from security deposit of the licensee and the licensee shall reimburse the security deposit to that extant within 15 days of such debit by DMRC." - It is suggested that the concessionaire should not be burdened with this type of responsibility, as DMRC would be approving the Location layout plan. The clause may therefore be either deleted or modified as with the existence of this clause the award of license would remain subjective and may give rise to avoidable	Not Agreed.
32	Point No. 41 - "The Licensee shall comply with the laws of land including Court judgments/court orders/Delhi Pollution Control Board and Delhi Fire Service guidelines, regulating the advertisements/displays and DMRC can't be held liable for any change/modification in these laws which adversely affects this tender and the licensee voluntarily and unequivocally agrees not to seek any claim, damages, compensation or any other consideration whatsoever on this account." - The concessionaire as an ordinary corporate citizen is bound by the changes in existing legislations as well as new legislation if it is enacted during the currency of the license. But the right to seek compensation is as lawful as abiding by the adverse impacts of changed/new legislations. The clause therefore may be	Not agreed to. This is in reference to laws of the land. DMRC is not liable to consider any claim, damages, compensation or any other consideration whatsoever .

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33	Point No. 21 of General Instructions to Tenderer - "The successful Applicant will be required to execute the License Agreement within 30 days from the date of issue of the Letter of Acceptance by DMRC. Prior to signing of the License Agreement, the successful Applicant shall: - (ii) Submit, to DMRC, the requisite advance quarterly License Fees and other demands, as communicated by DMRC in the LOA." - Please refer to suggestions made against Point No.6 of NIT at Sr. No. 01 above	Same as point no:25
34	Technical Requirements – Form – 2 (d) - "List of Companies having Advt. Contracts executed" - It is suggested that the conditions may be dropped, as the eligibility criteria is to be decided on the basis of sales turnover achieved, which is to be further supported with the audited balance sheet of the companies/certificates from statutory auditors. In those circumstances both the conditions are a duplicating and complicating time consuming exercise hence suggested to be dropped. However the same was discussed and agreed in the Pre	Agreed- List of Companies having advt contracts executed with the bidder is not required to be submitted.
35	Certificate" - It is suggested that the conditions may be dropped, as the eligibility criteria is to be decided on the basis of sales turnover achieved, which is to be further supported with the audited balance sheet of the companies/certificates from statutory auditors. In those circumstances both the conditions are a duplicating and complicating time consuming exercise hence suggested to be dropped. However the same was discussed and agreed in the Pre Bid Meeting and may be confirmed in the corrigendum.	Agreed- Work Completion Certificate is not required to be submitted.

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36	<p>DLA – Clause 4.3 - "Fixed Annual License fee of Rs./- (Rupeesonly/-) for advertisement spaces licensed out by DMRC to be paid quarterly. The quarterly License fee will be payable in advance, before last week of the running quarter which will be calculated as per financial year i.e. billing cycle shall be April to June, July-September, October-December & January to March. For depositing payment, Licensee should not wait for any formal invoice from DMRC. " - It is suggested that the condition of monthly payment with due date as 10th of Succeeding month may please be adopted. Insistence of Quarterly advance payment is a big financial burden in a highly competitive industry where the collection cycle as per industry norms is a minimum of 90 -120 days after completion of the</p>	Please follow tender conditions
37	<p>DLA – Clause 20.2 - "On operational ground or any other reason whatsoever, DMRC reserve the rights to terminate the contract by giving one month advance notice. The license agreement will stand terminated and the Security deposit will be refunded after adjusting outstanding dues, if any. The licensee voluntarily agrees not to seek any claim, compensation, damages or any other consideration whatsoever on any ground in this regard." - The operational grounds should be defined. As DMRC has bound the concessionaires with a minimum lock in period of five years this clause should not be applicable for the lock in period. However if the situation so warrants or becomes unavoidable then the notice</p>	Same as point no:19
	DLA – Clause 21 - TERMINATION OF AGREEMENT - "In the event of failure on the part of Licensee in payment of License	The modified clause is:-"In the event of failure on the part of Licensee in payment of License fees or any other charges due to the DMRC, breach of any of the terms

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38	<p>fees or any other charges due to the DMRC, breach of any of the terms and conditions of the agreement during the currency of the contract, DMRC Administration will have the right to disconnect the electricity &/or other utility services &/or terminate the contract by issuing one month notice and to discontinue the display forthwith without prejudice to any rights available and forfeit the security deposit. The Licensee shall also be subject to all provisions of the Delhi Metro Rail operation and maintenance Act and also to the notices issued from time to time by DMRC. DMRC may also terminate the contract on administrative ground after giving 1 (One) month notice. If contract is terminated on administrative grounds the security deposit of the licensee will be refunded after adjusting the outstanding dues, if any." - The minimum period of notice for termination under any circumstances should not be less than six months period as DMRC has asked for a Interest Free Security Deposit equivalent to six month's license fee to securitize its financial interests. Moreover normal process of law leading to any punitive actions must be preceded by reasonable notice and a chance to make</p>	<p>and conditions of the agreement during the currency of the contract, DMRC Administration will have the right to disconnect the electricity &/or other utility services &/or terminate the contract by issuing one month notice and to discontinue the display forthwith without prejudice to any rights available and forfeit the security deposit. The Licensee shall also be subject to all provisions of the Delhi Metro Rail operation and maintenance Act and also to the notices issued from time to time by DMRC. DMRC may also terminate the contract on administrative ground after giving 3 (Three) month notice. If contract is terminated on administrative grounds the security deposit of the licensee will be refunded after adjusting the outstanding dues, if any."</p>
39	<p>DLA - Clause 27 - Late Payments and Management of Contract - "For late payments by the licensee, interest at the rate of 18% per annum will be charged. Interest shall accrue till the license fees and other dues are finally deposited by the licensee to DMRC. The interest will be calculated based on the actual number of delay in days. In no case, even part of the quarterly advance payment, shall be allowed to remain outstanding beyond the running quarter and in contravention of this License Agreement." - It is suggested that the rate of interest should not be more than the prevailing Prime Lending Rate of State Bank of India and should be charged only on net outstanding balance of License Fee on</p>	<p>Please follow tender conditions</p>

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40	DLA – Clause No. 36 - "DMRC reserves the right to put Signage/Advertisement of the retail outlets/Toilet blocks in the property development areas in stations/circulating areas of the station. Such advertisements/signage will be restricted to the Inside/outer faces of the property development areas/circulating area on the outside of toilet blocks for which licensee will have no claim." - These type of advertisements should be restricted only to the self branding of the facility and the retail concessionaire and must not be a third party advertisement.	The advertisements on toilet blocks shall continue as it is outside the scope of this tender. Any other advertisements on outside structures shall not be permitted.
41	DLA – Clause No. 52 - "Penalty Clauses -Licensor reserves the right to impose the penalty on Licensee up to Rs.20,000/- per offence on the following offenses: - 52.2 Not following the instructions of the DMRC Administration regarding Operation of Developed Property even after 10 days from the date of issue of notice. 52.3 Any staff of Licensee found in drunken condition / indulging in bad conduct. 52.4 Any staff of the Licensee found creating nuisance on duty. 52.5 Sticking of stickers or hanging of banners or any other form of presentation other than allowed. 52.6 Improper maintenance & defacement of the Metro Property. 52.7 Dishonor of drafts and Cheques given by Licensee in favour of DMRC. 52.8 Misbehavior with staff and commuters of DMRC. " - The rate of penalty should be not more than Rs. 5000/- in each case as most of the violations happen unintentionally under generally unavoidable circumstances.	The penalty levied shall be up to Rs 20,000 which shall depend on the seriousness and frequency of the offence. To limit the misuse of the clause DMRC has made the provision of imposing the penalty by an officer not below the rank of HOD.
42	DLA – Clause No. 52 - "Penalty Clauses - Licensor reserves the right to impose the penalty on Licensee up to Rs.20,000/- per offence on the following offenses: - 52.1 Display of advertisement without approval of creatives from DMRC." This clause may be dropped as it is not possible to display an advertisement by following such a procedure in the normal course of functioning more particularly in an industry which works on very tight time schedules.	Same as point no-11

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43	DLA – Clause No. 56 - "DMRC's Remedies - Upon the occurrence of any event of default under the license agreement by the Licensee, then DMRC in addition to other rights or remedies it may have, shall have the right to terminate/revoke the License agreement upon thirty (30) days of written notice to the Licensee and also the right, with or without the termination of license, of re entry upon and taking possession of the Demised Premises and DMRC may remove all advertisements. DMRC will continue to reserve the right to enter into a separate license agreement without any obligations or rights towards the original LICENSEE." - It is suggested that the notice period should not be	Please follow tender conditions